IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 99 of 1999

With

CRIMINAL APPEAL No. 171 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KUMAR @ KARIM VALIMAMAD SUMRA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
CR.A. No. 99 OF 1999 : THROUGH JAIL for Appellant(s) : 1, MR CHIRAG M PAWAR for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1

CR.A. No. 171 OF 1999 : MR KP RAVAL APP for Appellant(s) : 1,
MR CHIRAG M PAWAR for Opponent(s) : 1.

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 09/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE R. P. DHOLAKIA)

1.0 These appeals are directed against the judgment and order dated 30th December, 1998 passed by the learned Addl. Sessions Judge, Jamnagar in Sessions Case No. 7 of 1994 whereby, the appellant – accused was convicted for the offences punishable u/s. 302, 307 & 452 of the Indian Penal Code, 1860 [for short, "the I.P.C."].

1.1 For conviction u/s. 302 of the I.P.C., the appellant – accused was sentenced to undergo imprisonment for life with fine of Rs.500/- and in default of payment of fine, Rigorous Imprisonment for a further period of One Month.

For conviction u/s. 307 of the I.P.C., the appellant – accused was sentenced to undergo Rigorous Imprisonment for Three Years with fine of Rs.250/- and in default of payment of fine, Rigorous Imprisonment for a further period of Fifteen Days; while for conviction u/s. 452 of the I.P.C., he was sentenced to undergo Rigorous Imprisonment for Two Years with fine of Rs.150/- and in default of payment of fine, Rigorous Imprisonment for a further period of Ten Days. All the sentences were ordered to run concurrently. The appellant – accused was also given the benefit of set-off.

1.2 So far as Criminal Appeal No. 171 of 1999 is concerned, it has been preferred by the State of Gujarat praying for enhancement of the sentence as against what has been awarded by the Court below.

1.3 As both the Appeals arise from the same judgment and order passed by the Court below,

they were heard together and are disposed of by this common judgment.

2.0 The brief facts of the prosecution case are as under;

2.1 On 08.09.1993 the deceased persons and other members of the family were at their home situated in Jam-khambhaliya Town of Jamnagar District. At around 0800 hrs., the appellant came at their home and enquired from the complainant about deceased – Halimaben, the mother of the complainant herein, as she was awoke at that time and the other members of the family i.e. deceased – Halimaben, deceased – Hasinaben and deceased – Mehmood were asleep and the other brother of the complainant – Ashrafkhan had gone for attending tuition classes. In reply, the complainant informed that deceased – Halimaben was asleep.

2.2 On hearing the talk between the appellant and the complainant, deceased – Halimaben woke up and left for the field so as to attend the

natural call. During that time, the appellant sat in the veranda of the house and the complainant went to the kitchen for preparing tea. At that time, the appellant caught hold of the complainant by her hair and dragged her inside the room. Thereafter, the appellant poured petrol on the complainant from a Can which he had brought along with him. As a result thereof, the complainant started shouting for help.

2.3 On hearing the shouts of the complainant, both deceased – Hasinaben as well as Mehmood woke up and they tried to rescue the complainant. At that time, the appellant also poured petrol on both deceased – Hasinaben as well as Mehmood and then tried to set them ablaze. However, he failed to do so as the match-stick didn't light-up at the relevant point of time. Immediately, thereafter, the appellant took an iron-pipe which was lying in the veranda of the house and with it started giving blows to deceased – Hasinaben.

2.4 When deceased – Mehmood tried to rescue deceased – Hasinaben from the assault, the appellant also started inflicting iron-pipe blows on deceased – Mehmood. Therefore, the complainant and deceased – Mehmood ran out of the house. However, the appellant followed them with the iron-pipe in his hands and continued to inflict blows on them with the said iron-pipe. By that time, the mother of the complainant – Halimaben returned from her natural call and at that time, the appellant also gave an iron-pipe blow on the head of the mother of the complainant – Halimaben. Thus, on account of the aforesaid incident, all the family members who were present in the house at the relevant point of time sustained severe bodily injuries and both deceased – Halimaben and Hasinaben succumbed to their injuries. During this time, a huge crowd gathered at the said place but, none of them dared to catch hold of the appellant, after having viewed the blood-cuddling act with their eyes.

2.5 Thereafter, the appellant fled the scene of offence with the said iron-pipe. As the condition of deceased – Mehmood became serious, the complainant took him to the Civil Hospital in an Auto-rickshaw for necessary medical treatment. A telephonic message about the said incident was given by the Hospital to the police authority of Khambaliya Police Station. On the basis of the said message, the P.S.O. of Khambaliya Police Station gave a 'vardhi' to P.S.I. one – Hareshkumar Ghanshyamsinh Parmar for carrying out necessary investigation.

2.6 The said P.S.I. went to the Hospital and carried out necessary preliminary investigation. A complaint was filed against the appellant for the said alleged offence, which came to be registered as I – C. R. No. 172 of 1993 with Khambaliya Police Station for offences punishable u/s. 302, 307 and 452 of the I.P.C. and Section 135 of the Bombay Police Act.

2.7 Thereafter, the Investigating Officer went to the scene of offence. Inquest '*panchnama*' of both the dead bodies was performed. '*Marnottar*' forms were filled-up and necessary arrangements were made for sending the dead bodies of both the deceased for performing post-mortem. Necessary '*muddamal*' articles were also collected from the scene of offence. The clothes worn by the deceased persons as well as the complainant at the relevant point of time were also seized. '*Panchnama*' of the scene of offence was also done in the presence of '*panchas*'.

2.8 In the meanwhile, as the condition of deceased – Mehmood had started deteriorating, he was shifted to Civil Hospital, Rajkot and later, to V. S. Hospital at Ahmedabad where, during the course of treatment, he succumbed to the injuries.

2.9 Further investigation was carried out and

statements of several witnesses were also recorded. As cogent material was found against the appellant, the appellant – accused came to be arrested on 12.09.1993. During the course of interrogation, as the appellant showed his willingness to produce the weapons, alleged to have been used by him in the commission of the offence in question, a primary '*panchnama*' to that effect was drawn in the presence of '*panchas*'. Therefore, on 14.09.1993 the Investigating Officer, '*panchas*' and appellant went to the said place, at the instance of the appellant, in a police vehicle. After reaching the said place, the weapon – iron-pipe was seized by way of a separate '*panchnama*' at Exhibit – 121.

2.10 On 15.09.1993 the appellant showed his willingness to produce the clothes which he had worn at the time of the commission of the alleged incident in question. For that also, a primary '*panchnama*' to that effect was drawn in the

presence of '*panchas*'. Thereafter, the Investigating Officer, '*panchas*' and appellant went to the said place, at the instance of the appellant, in a police vehicle. After reaching the said place, the clothes were also seized by way of '*panchnama*' at Exhibit – 122.

2.11 Thereafter, necessary arrangements were made for sending the '*muddamal*' articles to the F.S.L. for examination. On receipt of the F.S.L. report, medical reports and PM notes of the deceased and the injury certificate of the complainant, they were kept in the investigation file.

2.12 On completion of the investigation, charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate, First Class, Khambaliya. As the case was exclusively triable by the Court of Sessions, the learned J.M.F.C., Khambaliya committed the case to the District & Sessions Court, Jamnagar which came to

be numbered as Sessions Case No. 7 of 1994. The case was then handed over to the learned Addl. Sessions Judge for disposal on merits. On production of the appellant, the learned Addl. Sessions Judge framed the charge against the appellant and as the appellant pleaded not guilty to the said charge, trial was conducted against him.

3.0 The prosecution has examined in all thirty five witnesses in order to prove the guilt against the appellant – accused namely, PW – 1 Dr. Gani Saalemamad Malvani at Exhibit – 23, PW – 2 Fatmaben Isabhai at Exhibit – 45, PW – 3 Aadam Sadik Khoro at Exhibit – 46, PW – 4 Karsanbhai Pethabhai Gadhvi at Exhibt – 47, PW – 5 Abbas Mahamad Husain at Exhibit – 279, PW – 6 Vasudevsinh Bahadursinh Jhala at Exhibit – 49, PW – 7 Mansinh Chunabhai Rathod at Exhibit – 50, PW – 8 Haroon Haji at Exhibit – 54, PW – 9 Budha Samat at Exhibit – 55, PW – 10 Umarsinh Karsansinh at Exhibit – 56, PW – 11 Surubha

Bhimsinh Jadeja at Exhibit – 57, PW – 12 Alashah Jhadulshah at Exhibit – 58, PW – 13 Amrutlal Karsandas at Exhibit – 59, PW – 14 Bhavsinh Balubha Sodha at Exhibit – 60, PW – 15 Mukund Damodar at Exhibit – 61, PW – 16 Nirmalsinh Jatubha Jhala at Exhibit – 62, PW – 17 Shailesh Gopaldas at Exhibit – 63, PW – 18 Rama Bhaya at Exhibit – 64, PW – 19 Rameshchandra Harilal Davda at Exhibit – 65, PW – 20 Digvijaysinh Balvantsinh Jadega at Exhibit – 66, PW – 21 Karsanbhai Govindbhai at Exhibit – 67, PW – 22 Manikant Labhshankar Shukla at Exhibit – 68, PW – 23 Haribhai Shrimali at Exhibit – 73, PW – 24 Hasmukh Bhagwanji Jethwa at Exhibit – 75, PW – 25 Ramesh Laljibhai at Exhibit – 76, PW – 26 Vajubha Rasubhai Jadega at Exhibit – 77, PW – 27 Mumtaz Jumabhai Makrani at Exhibit – 82, PW – 28 Lakhman Malde at Exhibit – 84, PW – 29 Dr. Vinayakrao Vasudevrai Patil at Exhibit – 85, PW – 30 Yunus Osman Baloch at Exhibit – 87, PW – 31 Ravjibhai Badjibhai at Exhibit – 88, PW – 32 Mohan Jivanbhai at Exhibit – Mohan Jivanbhai at Exhibit

– 97, PW – 33 Rahimbhai Dawoodbhai at Exhibit – 98, PW – 34 Mahesh Meraman at Exhibit – 106 and PW – 35 Hareshkumar Ghanshyamsin Parmar at Exhibit – 111.

3.1 The prosecution has also relied upon several documentary evidence, and more particularly, the evidence in the form of complaint at Exhibit – 133, '*Panchnama*' of the scene of offence at Exhibit – 116, discovery '*Panchnama*' of the weapon – iron-pipe at Exhibit – 121 and of the clothes of the appellant at Exhibit – 122, the post-mortem notes of all the deceased persons at Exhibits – 26, 27 & 86 and Inquest '*Panchnama*' at Exhibit – 69.

3.2 On submission of the closing '*purshis*', the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and

order and convicted the appellant for the offence, as narrated in the earlier part of this judgment. Hence, the present appeals.

4.0 Mr. Chirag Pawar learned Advocate for the appellant – accused has submitted that except the evidence led by the complainant in the form of complaint at Exhibit – 133 and deposition as PW – 27 at Exhibit – 82, there is no other evidence on record to connect the appellant – accused with the crime in question.

4.1 Learned Advocate has contented that though the neighbours of the deceased persons have been examined as prosecution witnesses, neither of them have supported the case of the prosecution to any extent, except PW – 4 at Exhibit – 47 and PW – 5 at Exhibit – 48. He has further contented that so far as the evidence led by these two witnesses is concerned, they could not be relied upon for recording conviction inasmuch as PW – 4 is not an eye-witness to the

alleged incident in question and PW – 5 has been declared as 'hostile' by the trial Court. Thus, the prosecution case entirely rests upon the evidence led by the complainant only.

4.2 Learned Advocate has next contented that the complainant herein is the daughter of deceased – Halimaben and sister of both deceased – Hasinaben as well as Mehmood and, therefore, she is an interested witness. Hence, the evidence led by her as PW – 27 at Exhibit – 82 requires corroboration. He has submitted that even if the evidence led by the complainant is believed to be true, then also it could not be relied upon since the prosecution has failed to establish that the appellant was the assailant and that he was the person who had killed three members of the same family and had caused the injuries in question to the complainant.

4.3 Learned Advocate has further contented that the appellant – accused has been falsely

involved in the alleged offence on the basis of a past enmity and that there was no reason for the appellant for committing the said alleged offence. He has, therefore, submitted that the trial Court has committed serious error in not properly appreciating the evidence on record and in convicting the appellant – accused for the alleged offences in question.

4.4 Learned Advocate for the appellant – accused has lastly submitted that if this Court is not inclined to entertain the appeal preferred by the appellant - accused, then the Court may, by taking a lenient view of the matter, reduce the sentence as awarded by the trial Court to a one already undergone by him since the appellant - accused has already undergone more than 13 years of imprisonment.

5.0 Mr. K. P. Raval learned APP has vehemently objected to the grant of the appeal preferred by the appellant – accused. He has

contented that so far as the contention raised by learned Advocate for the appellant – accused that the evidence led by the complainant cannot be relied upon is concerned, it may be noted that the presence of the complainant, at the scene of offence, at the relevant point of time, was a natural one, as she is the daughter / sister of the deceased persons and that the incident in question took place at her own home. He has further contented that merely because the eye-witness of the incident in question is a relative of the deceased persons, her evidence cannot be discarded. He has submitted that, in such case, the Court is required to carefully scruitinize the evidence led by such witness, and if, after proper scrutiny, such evidence is found to be truthful and reliable, then conviction can be based on it.

5.1 Learned APP has further submitted that the appellant – accused has committed the alleged offence in question on account of a past enmity

with the family of the deceased persons since a complaint being I – C. R. No. 358 of 1990 for offences punishable u/s. 376, 506(2) and 504 of the I.P.C. was filed against him & one more accused person by the mother of the complainant herein, i.e. deceased – Halimaben alleging that the appellant & the other accused person named in the said complaint had committed rape on her daughter, i.e. deceased – Hasinaben. He has further submitted that for the said alleged offence, the appellant – accused was charge-sheeted and was also suspended from the service.

5.2 Learned APP has submitted that on account of the aforesaid action of deceased – Halimaben of filing complaint against him, the appellant – accused had grudge against the family of the deceased persons and keeping this enmity in mind, the appellant – accused had committed the offence in question. Thus, the motive behind the commission of the said offence is also clearly established.

5.3 Learned APP has further submitted that at the time when the incident in question took place, the appellant – accused was serving as a Police Constable in Okha Police Station, Jamnagar District and that on the day when the alleged offence is said to have taken place, the appellant was on official leave. He has submitted that the place where the alleged incident is said to have taken place is situated at a far distance from the place where the appellant was discharging his duties. Learned APP has contented that from the evidence led by PW – 24 at Exhibit – 75 and PW – 25 at Exhibit – 76, who are independent witnesses, the presence of the appellant – accused at Jam-khambaliya Town is clearly established.

5.4 Learned APP has further contented that the '*muddamal*' article - clothes which have been produced by the appellant – accused himself and which have been recovered by way of '*panchnama*'

at Exhibit – 122, contained human blood stains and that the said '*muddamal*' article – clothes have been identified by the aforesaid two independent witnesses to be the one worn by the appellant – accused on the date of the incident, i.e. when both these witnesses met the appellant – accused at two different places.

5.5 Learned APP has, therefore, submitted that looking to the manner in which the offence in question was committed and the entire evidence on record, this is a fit case wherein the sentence imposed by the trial Court is required to be enhanced and the appeal preferred by the appellant – accused is required to be rejected.

6.0 Before proceeding with the matter on merits, we would like to highlight certain facts which are not disputed by either side. At the time when the alleged incident in question took place, the appellant - accused was serving as a Police Constable at Okha Police Station,

Jamnagar. The document at Exhibit – 80 is the reply to the communication sent by the P.S.I. of Khambaliya Police Station to P.S.I. of Okha Police Station enquiring as to whether on 08.09.1993, i.e. the date on which the alleged incident took place, the appellant – accused was present on duty or not. From the said reply, it is established that on the said date, i.e. on 08.09.1993, the appellant – accused was on official leave. Thus, it is established that on the date of the alleged incident, the appellant – accused was not "On Duty" at Okha Police Station, Jamnagar and that he was on official leave.

7.0 The prosecution has examined one – *Hasmukh Bhagwanji Jethwa* as PW – 24 at Exhibit – 75. This witness was working in the Home Guards and was residing along with his family in Okha Town, at the relevant point of time. As this witness was also working in a Department similar to that of the appellant – accused and was also residing in the same Town viz. Okha, both the

appellant and this witness were known to each other.

7.1 In his deposition, PW – 24 has stated that on the date of incident, i.e. on 08.09.1993 while he was on duty in the Main Market of Okha Town, he had met the appellant – accused at around 0500 hrs. and that, at that time, the appellant – accused was about to board a Bus. However, since this witness has declined to identify the appellant – accused before the Court below, he has been declared as '*hostile*'. Therefore, the evidence led by this witness shall not be of much relevance to the prosecution case.

8.0 The prosecution has examined one – *Ramesh Laljibhai* as PW – 25 at Exhibit – 76. This witness was working as a Wireless Operator with Khambaliya Police Station at the time when the incident in question took place.

8.1 In his deposition, this witness has

stated that on 08.09.1993, while he was on duty at Khambaliya S.T. Bus-stand, he had met the appellant – accused at around 0730 hrs. near a Tea-stall outside the S.T. Bus-stand. He has further deposed that at that time he had enquired from the appellant – accused as to where he was posted for duty and in reply, the appellant – accused had informed him that he was posted at Okha Police Station. He has further categorically deposed that at the time when he had met the appellant – accused on 08.09.1993 at Khambaliya S.T. Bus-stand, the appellant - accused had worn a pink colored shirt and a white colored trouser.

8.2 Thus, from the evidence led by PW – 25 at Exhibit – 76, it is established that on 08.09.1993, i.e. the date on which the alleged incident is said to have taken place, the appellant – accused was present at Khambaliya Town in the early morning hours and that on that day, the appellant – accused had worn a pink colored shirt and a white colored trouser.

8.3 This witness is an independent witness and his presence at Khambaliya S.T. Bus-stand, at the relevant point of time, was a natural one. Moreover, there shall not be any question of mis-identification also since this witness was also working in the Police Department, in the same District, at that point of time.

8.4 Therefore, the evidence led by this witness as PW – 25 at Exhibit – 76 can be said to be trustworthy and believable. Nothing contrary has come out from the cross-examination of this witness which may lead us to believe the evidence led by him to be untrue or unreliable.

8.5 Thus, though PW – 24 has been declared as '*hostile*' by the Court below, the prosecution has been able to prove beyond doubt, through the evidence of PW – 25 at Exhibit – 76, who is an independent witness, the presence of the appellant, on the date of the incident, at

Khambaliya Town, though his place of employment at the relevant point of time, was at Okha Town.

9.0 The complainant herein is the daughter of deceased – Halimaben and sister of both deceased – Hasinaben as well as Mehmood. On a bare perusal of the impugned complaint at Exhibit - 133, it appears that on the date of incident, the appellant – accused had reached the house of the deceased – persons at around 0830 hrs. along with a Can containing petrol. At that time, only the three deceased persons who were sleeping and the complainant were present in the house since the father and a younger brother of the complainant had gone out. The appellant – accused made necessary enquiry from the complainant about deceased – Halimaben. However, at that time, deceased – Halimaben had proceeded towards the field in order to attend the natural call. Thereafter, when the complainant proceeded towards the kitchen for the purpose of preparing tea for the appellant – accused, the appellant –

accused caught hold of the complainant by her hair and poured petrol on her from the Can which he had brought along with him. As a result of that the complainant started shouting and on hearing the shouts of the complainant, both deceased – Hasinaben and Mehmood woke up and tried to rescue the complainant. In the meantime, the appellant – accused took an iron-pipe, which was lying in the house of the complainant and inflicted several blows on the body of both the deceased persons as well as the complainant. By that time, deceased – Halimaben also reached home and at that time the appellant – accused also inflicted deadly iron-pipe blows on the body of deceased – Halimaben. As a result thereof, both deceased – Halimaben as well as Hasinaben died on the scene of offence and deceased – Mehmood was taken to the Hospital and, ultimately, expired during the course of treatment at V. S. Hospital, Ahmedabad.

9.1 Here, it may be noted that in the said

complaint at Exhibit – 133, the complainant has also averred about the reasons behind the commission of the alleged act by the appellant – accused. It has been averred in the complaint that at about three and half years prior to the date of the alleged incident in question, a complaint being I – C. R. No. 358 of 1990 for offences punishable u/s. 376, 506(2) and 504 of the I.P.C., was filed against the appellant – accused & one more accused person, by the mother of the complainant herein, i.e. deceased – Halimaben, alleging that the appellant - accused & the said other accused person had committed rape on her daughter deceased – Hasinaben. It has been further averred in the complaint that for the said alleged offence, the appellant – accused has also been charge-sheeted and suspended from the service.

9.2 It may further be noted that the complainant has also specifically averred about the clothes worn by the appellant – accused on

the date of the incident viz. a pink colored shirt and a white colored trouser.

10.0 *Therefore, the question that is now required to be considered by this Court is as to whether the averments / evidence made / led by the complainant in the form of complaint at Exhibit – 133 and her deposition as PW – 27 at Exhibit – 82 is believable or not ?* A contention has been raised by learned Advocate for the appellant – accused that since the complainant herein is the relative of all the three deceased persons her evidence could not be relied upon fully as she is an interested witness and it requires corroboration.

10.1 The law on the subject is well-settled. Even in a recent decision of the Apex Court in the case of ***Amitsingh Bhikamsingh Thakur v. State of Maharashtra*** reported in ***A.I.R. 2007 S.C. Page 676***, the Apex Court has held that the plea that a prosecution witness was related to the deceased

and, therefore, his / her evidence should be rejected, is without any substance. Relationship would not result in the mechanical rejection of the testimony of the witnesses.

10.2 Settled norms of appreciation of evidence requires that the evidence of such witness/s is to be assessed with caution and if, after necessary care and caution, the evidence led by such witness/s is found to be truthful and reliable, then conviction can be based on the evidence of such witness/s. The document at Exhibit – 116 is the '*panchnama*' of the scene of offence. From the said document, the presence of a partly-filled Can of Petrol, a partly burnt match-stick, a match-box and scattered drops of petrol on the floor of the house are established. It is required to be noted that the '*muddamal*' weapon – iron-pipe used in the commission of the alleged offence in question as well as the clothes worn by the appellant – accused, at the relevant point of time, both were recovered at

the instance of the appellant – accused himself, by way of discovery '*panchnamas*' at Exhibits – 121 & 122 respectively. From the discovery '*panchnama*' at Exhibit – 122, it is established that on the date of the alleged incident in question, the appellant – accused had worn a pink colored shirt and a white colored trouser.

10.3 Thus, the evidence led by the complainant in the form of complaint at Exhibit – 133 and deposition as PW – 27 at Exhibit – 82 gets ample support from the evidence led by *Ramesh Laljibhai* as PW – 25 at Exhibit – 76, who is an independent witness and the discovery '*panchnama*' at Exhibit – 122. The '*panchnama*' of the scene of offence at Exhibit – 116 also supports the say of the complainant, so far as the use of Petrol by the appellant – accused in the entire episode is concerned. Moreover, there shall not be any question of mis-identification also, as both the complainant and the appellant – accused were known to each other and the incident

in question took place in the morning hours in broad day-light.

10.4 In that view of the matter, it could be concluded that the evidence led by the complainant in the form of complaint at Exhibit – 133 and deposition as PW – 27 at Exhibit – 82 are wholly reliable and trustworthy. Now, even if we accept the contention raised by learned Advocate for the appellant – accused that the evidence led by the complainant requires corroboration, as she is an interested witness, the same has got support from the evidence led by *Ramesh Laljibhai* as PW – 25 at Exhibit – 76, the discovery '*panchnama*' at Exhibit – 122 and the '*panchnama*' of the scene of offence at Exhibit – 116.

11.0 The motive behind the commission of the alleged offence has also been narrated in the complaint at Exhibit–133 wherein, the complainant has specifically averred about the filing of a complaint by deceased – Halimaben against the

appellant and one accused person for offences punishable u/s. 376, 506(2) and 504 of the I.P.C. for which the appellant – accused was charge-sheeted and was also suspended from the service. From the evidence discussed hereinabove, it appears that the reason behind the death of three innocent persons of one family is that one of the three deceased persons, viz. Halimaben had filed a complaint, as discussed hereinabove, against the appellant - accused, for which the appellant – accused was also suspended from the service. Thus, the motive behind the commission of the said offence by the appellant – accused is also proved beyond doubt.

12.0 We have also gone through the medical evidence on record in the form of PM notes of all the deceased persons at Exhibits – 26, 27 & 86, the Inquest '*Panchnama*' at Exhibit – 69 and the F.S.L. Report at Exhibit – 128. The PM notes of the deceased persons show that the injuries sustained by them were anti-mortem and that they

were possible by the infliction of iron-pipe blows. The prosecution has also proved the Inquest '*panchnama*' beyond doubt. The '*muddamal*' clothes as well as iron-pipe produced by way of discovery '*panchnamas*' at Exhibits 121 and 122 also contained human blood stains and the same have been proved by the prosecution beyond doubt. Thus, the fact that the deceased persons died a homicidal death is clearly established.

13.0 From the conduct of the appellant – accused, as emerging from the evidence on record, it appears that the appellant – accused is an head-strong person since in the earlier offence of rape alleged against the appellant - accused, no family member of the complainant had deposed against the appellant – accused before the Court below. It is highly unbelievable that there were no independent eye-witness/s to the incident in question, more particularly, when the said incident took place in the early morning hours and there would have been loud hue and cry when

such blood-cuddling act was in progress. Therefore, if we believe the say of the prosecution as it is, then no person would have even dared to stop the appellant – accused after having viewed the ruthless act with their eyes and when after committing the said offence, the appellant – accused fled the scene of offence with the '*muddamal*' – iron-pipe in his hands.

14.0 Considering the facts and circumstances of the case, we are of the opinion that the prosecution has been able to prove the guilt against the appellant beyond reasonable doubt. It is clearly established from the evidence on record that the appellant – accused is the author of the blood-cuddling act which, in our opinion, does not deserve any sympathy in the eyes of law. Hence, we are not inclined to accept the request made by learned Advocate for the appellant of reducing the sentence to the one already undergone by the appellant - accused. Before parting, we would like to state that the Sessions

Court concerned has recorded the oral evidence of the witnesses over a period of five years during which some of the witnesses have not supported the case of the prosecution and have been declared as 'hostile'. If the evidence would have been recorded within a reasonable period, then it might be that the total number of witnesses who have turned 'hostile' might have been less in number. However, be that as it may, in the case on hand, though the number of witnesses who have turned 'hostile' is more, the same has not caused any damage to the prosecution case.

15.0 So far as the appeal filed by the State is concerned, we have considered the contentions advanced by the learned APP in that regard. However, as sufficient time has elapsed after the happening of the incident in question and when the appellant has already undergone more than 13 years of imprisonment, we are not inclined to allow the appeal filed by the State.

16.0 For the foregoing reasons, both the appeals are dismissed. The appellant – accused is on bail and his bail bonds stand canceled. The appellant – accused is directed to surrender to the custody within a period of *TWO MONTHS* from today.

[R. P. DHOLAKIA, J.] [K. S. JHAVERI, J.]

Pravin/*